

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATIONS Nos 2264, 2265 & 2266 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

and

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

SARSALI SEVA SAHKARI MANDLI LTD

Versus

STATE OF GUJARAT

Appearance:

MR HARIN P RAVAL for MR PM RAVAL for Petitioners
MR MI HAVA for Respondent No. 1
MR L.R. PUJARI, AGP, for Respondent No. 2

CORAM : MR.JUSTICE R.K.ABICHANDANI

and

MR.JUSTICE KUNDAN SINGH

Date of decision: 23/11/2000

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI)

In these three petitions which are identical in nature the petitioner-societies have challenged the validity of the provisions of Section 17-A of the Gujarat Cooperative Societies Act, 1961, and the orders made under Section 17-A of the said Act. In all these matters interim relief has been operating against the implementation of the orders which have been made under Section 17-A of the Act.

2 When these petitions are called out, it is pointed out that the validity of the provisions of Section 17-A came to be considered by a Division Bench of this Court in AMRELI DISTRICT COOPERATIVE SALE & PURCHASE UNION V. STATE OF GUJARAT reported in 25 (2) GLR at page 1244 and the Division Bench in the context of the provisions of Section 17-A held in paragraph 46 that the grievance of the petitioners that Section 17-A was ultra vires Article 19(1)(c) was not well-founded since the said provision was conceived and inserted in the principal Act for the purposes of facilitating compulsory amalgamation of the trading or business societies and not the societies which are carrying on activities in nature of mere services. As regards the challenge against the provisions of Section 17-A on the ground that it violates Article 14 of the Constitution, the Court in paragraph 94 of the judgement while rejecting the challenge held that it cannot be said that the power conferred by the said provision was arbitrary or uncanalised or that there were no procedural safeguards provided. It was held that no order could be made under the Section unless a draft of the proposed order was sent to the society or to each of the societies concerned and the Registrar has to consider the suggestions and objections received either from the society or from any member or class of members thereof or from any creditor or class of creditors, filed within a period as may be fixed by the Registrar which should not be less than one month from the date of the receipt of the order by the society. It was held that it could not be said that there was no hearing opportunity provided. It was also held that in order that there may be effective opportunity of hearing to all members and creditors of a concerned society, the Registrar should publish the proposed order in the newspapers having widest circulation in the area where the society concerned may be operating inviting objections to the proposed amalgamation. The Court held that the Registrar, in the process, was not only required to

consider the suggestions and objections but also modify the order as he may see necessary in the light of such suggestions and objections and therefore was bound to act in a just and fair manner.

3 It is stated that appeals were carried against the above decision to the Supreme Court and both the sides had withdrawn their appeals as a result of which the decision became final.

4 In the present case according to the petitioners they are service societies. The decision in Amreli District Coop. Sale and Purchase Union (*supra*) was rendered during the pendency of these petitions. The orders which are challenged in these petitions are purported to have been passed under the provisions of Section 17-A of the Act. If the provision is not applicable to the service societies on the ratio of the said decision, then different considerations would apply. It would therefore be appropriate for the concerned authorities of the respondents to reconsider the matter and examine whether the orders impugned in these petitions which have been made u/s 17-A of the Act would remain operative after the law declared in the said decision in the context of the provisions of Section 17-A of the Act. The impugned orders have been stayed during the pendency of these petitions and therefore it would be proper that they are not implemented until the respondent-authorities reconsider the matter in the light of the ratio of the aforesaid decision of this Court. Any decision that may be taken on such reconsideration will have to be taken after providing an opportunity of hearing to the petitioners and within a reasonable time. Until such decision is taken, the impugned orders will not be implemented. Subject to these directions all the three petitions are disposed of. Rule is discharged in each of them with no order as to costs. Interim relief stands vacated.

(mohd)